

FCC MAIL SECTION

Federal Communications Commission

DA 00-999

May 9 12 43 PM '00

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	
Table of Allotments,	)	
FM Broadcast Stations.	)	
	)	
(Hornbrook, California)	)	MM Docket No. 00-73 ✓
	)	RM-9861
	)	
(Sterling, Colorado)	)	MM Docket No. 00-74
	)	RM-9862
	)	
(Kahului, Hawaii)	)	MM Docket No. 00-75
	)	RM-9863

**NOTICE OF PROPOSED RULE MAKING**

Adopted: April 26, 2000

Released: May 5, 2000

Comment Date: June 26, 2000

Reply Date: July 11, 2000

By the Chief, Allocations Branch

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

**(1) MM Docket No. 00-73, RM-9861****Petitioner:** Logan and Company

c/o James A. Koerner, Esq.  
Koerner & Olender, P.C.  
5809 Nicholson Lane  
Suite 124  
North Bethesda, MD 20852

**Proposal:** Allot Channel 255A to Hornbrook, California, (pop. 350),<sup>1</sup> as that locality's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Hornbrook, California	--	255A

**Coordinates:** 41-53-06 NL; 122-35-03 WL.

**Additional Information:** The proposed allotment requires a site restriction 3.7 kilometers (2.3 miles) southwest of the community to avoid a short-spacing to Station KAGO-FM, Channel 258C1, Klamath Falls, Oregon, at coordinates 42-12-56 NL; 121-47-56 WL. Petitioner advises that Hornbrook is listed in the 1998 Rand McNally Commercial Atlas and Marketing Guide, which attributes it with a population of 350 persons.<sup>2</sup> Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several States and communities."

The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census as a Census Designated Place ("CDP"), that is sufficient to satisfy its status. Hornbrook is not incorporated or listed in the U.S. Census. In an effort to establish that Hornbrook qualifies as a community for allotment purposes, petitioner advises that Hornbrook contains a post office, several churches, a volunteer fire department, a school (housing kindergarten through eighth grade students), as well as several local businesses.<sup>3</sup> However, it has not specifically identified the listed entities by street addresses or identified any other businesses or political, social and commercial organizations that identify themselves with Hornbrook. See Stock Island, Florida, 8 FCC Rcd 343 (1993). Therefore, petitioner is requested to provide

<sup>1</sup> Population figure was taken from the 1998 Rand McNally Commercial Atlas and Marketing Guide.

<sup>2</sup> However, geographical location alone is not sufficient to establish "community" status. See Vimville, Mississippi, 48 Fed. Reg. 5974 (1983); also, Hannibal, Ohio, 6 FCC Rcd 2144 (1991).

<sup>3</sup> In further support of Hornbrook's community status, petitioner cites e.g., Cal-Nev-Ari, Nevada, 14 FCC Rcd 17153 (1999); Implementation of BC Docket No. 80-90 to Increase the Availability of FM Broadcasting Assignments (Semora, North Carolina), 5 FCC Rcd 934 (1990); Seven Locks Broadcasting Co., 37 FCC 82 (1964). Petitioner is requested to demonstrate how the attributes of Hornbrook parallel those of its specified case precedent.

additional information to demonstrate Hornbrook's community status. This may be proven by the testimony of local residents or by subjective evidence indicating the existence of a community. See Beacon Broadcasting, 2 FCC Rcd 3469 (1987), aff'd., 2 FCC Rcd 7562 (1987). Examples of objective indications of community

status include the existence of political, social, economic, commercial, cultural or religious organizations and services in the community. See Kenansville, Florida, 5 FCC Rcd 2663 (Policy and Rules Div. 1990), aff'd. 10 FCC Rcd 9831 (1995). Petitioner is requested to provide additional information regarding the attributes of Hornbrook, California, consistent with the above guidelines.

**FCC Contact:** Nancy Joyner, (202) 418-2180.

**(2) MM Docket No. 00-74; RM-9862**

**Petitioner:** Ling Broadcasting

c/o A. Wray Fitch, III, Esq.  
Gammon & Grange, P.C.  
8280 Greensboro Drive, 7<sup>th</sup> Floor  
McLean, VA 22102-3807

**Proposal:** Allot Channel 248C3 to Sterling, Colorado (pop. 10,362),<sup>4</sup> a census designated place, as the community's third local FM broadcast service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Sterling, Colorado	284C1, 288A	248C3, 284C1, 288A

**Coordinates:** 40-37-32 NL; 103-12-25 WL

**Additional Information:** No site restriction is required for this proposal.

**FCC Contact:** Nancy Joyner, (202) 418-2180.

**(3) MM Docket No. 00-75; RM-9863**

**Petitioner:** New West Broadcasting

c/o Robin B. Thomas  
President  
New West Broadcasting  
1001 Weatherby Drive  
Cheyenne, WY 82007

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<sup>4</sup> Population figure was taken from the 1990 U.S. Census Reports.

**Proposal:** Allot Channel 223C2 to Kahului, Hawaii, as that community's second local aural FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Kahului, Hawaii	260C1	223C2, 260C1

**Coordinates:** 20-50-24 NL; 156-23-14 WL

**Additional Information:** This proposal requires a site restriction 10.5 kilometers (6.5 miles) southeast to avoid a short spacing to Station KSSK-FM, Channel 222C, Waipahu, Hawaii, at coordinates 21-23-49 NL; 158-05-58 WL.

**FCC Contact:** Nancy Joyner, (202) 418-2180.

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference **only** the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before June 26, 2000, and reply comments on or before July 11, 2000, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment

which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in this proceeding.

**FEDERAL COMMUNICATIONS COMMISSION**

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204.(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comment herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties, must be made in written comments reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, 445 Twelfth Street, SW.; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center (Room CY-A257) at its headquarters, 445 Twelfth Street, SW., Washington, D.C.